IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7441 OF 2006

Smt. Sharda Ramprasad Shukla ..Petitioner

Vs.

UCO Bank Ltd. ..Respondent

Mr. A.M. Kulkarni for petitioner.

**CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.**

**Dated: December 22, 2006.**

**P.C.:**

1. Heard Mr. Kulkarni the learned counsel for the petitioner who was a guarantor for the loan advanced by the respondent-bank. The borrower failed to repay the loan and, therefore, the respondent-bank initially issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the Act), to both the borrower as well as the petitioner-guarantor. As due steps were not taken within a period of 60 days for repayment of the loan amount, an order came to be passed under Section 13(4) of the Act and symbolic possession of the secured assets was taken on 2/6/2006. An application was submitted to the District Magistrate for taking

assistance under Section 14 of the Act and date was fixed by the Magistrate for hearing on 8/8/2006. On receipt of this notice, it appears, the order passed under Section 13(4) was sought to be challenged by filing an appeal under Section 17 of the Act before the Debt Recovery Tribunal at Pune. As the appeal was beyond time, an application was made for condonation of delay and the said application came to be dismissed by the learned Presiding Officer of the Debt Recovery Tribunal on 8/8/2006. Hence this petition.

2. The learned counsel for the petitioner fairly concedes the legal position that the impugned order is an appealable order under Section 18(1) of the Act. However, he invited our attention to the second and third proviso below Section 18(1) of the Act and submitted that the petitioner will be required to deposit at least 25% to 50% of the amount of debt due from the borrower and this will have to be done even before the liability of the borrower or, as the case may be, of the guarantor is determined by the Lower Appellate Tribunal. He further pointed out that the Lower Appellate Tribunal in the case of M/s. Duwell Agency and Co. vs. The Pune People Co-op.Bank Ltd.,

Pune and ors. (Appeal No.278/2006) has already taken a view in its judgment dated 26/7/2006 that there is no provision for granting a waiver for pre-deposit to entertain the appeal and, therefore, he has approached this court directly.

3. The learned counsel for the petitioner also relied upon a three Judge Bench decision in the case of Marida Chemicals Ltd. vs. Union of India and ors. **[2004(5) ALL MR (S.C.) 484]** and more particularly paras 60 and 65 therein. In Mardia Chemicals's case (Supra) subsection 2 of Section 17 of the Act has been held to be unreasonable, arbitrary and violative of Article 14 of the Constitution. The learned counsel for the petitioner has advanced arguments before us in support of his contentions that the second and third proviso below Section 18(1) of the Act will also have to be held to be unreasonable, arbitrary and violative of Article 14 of the Constitution for the same reasons as have been recorded by the Apex Court in Mardia Chemicals case (Supra).

4. We have noted that after the decision in the case of Marida Chemicals Ltd. was pronounced,

subsections 2 to 7 have been replaced by Act 30 of 2004 in place of the old subsection 2 which has been declared as unconstitutional by the Apex Court and in any case in the case of Mardia Chemicals Ltd. the validity of the Act was challenged, at the first instance, in its entirety and more particularly Sections 13, 15, 17 and 34 therein. In these obtaining circumstances, there is no case made out before us to entertain this petition directly by-passing the appellate remedy provided under Section 18(1) of the Act. In any case it is not disputed that the petitioner was a guarantor to the loan advanced by the respondent-bank and there is a default in repayment of the said loan by the borrower. Inspite of the notice having been issued under Section 13(2) of the Act, no steps were taken within the time limit of 60 days either by the borrower or the guarantor and the guarantor cannot say that if the borrower fails to repay, the property hypothecated by the guarantor in favour of the bank for the said loan cannot be attached and disposed for securing the amounts due from the borrower. The petitioner will have to file an application for reducing the deposit amount to 25% along with the appeal to be preferred before the Lower

Appellate Tribunal under Section 18(1) of the Act and it is for the Tribunal to pass appropriate order on such an application and for the reasons to be stated. In our considered view, there does not appear any scope to entertain the appeal by waiving the condition of deposit. When a statutory remedy of appeal is available to the petitioner, we do not see any reason to entertain this petition under Articles 226 and 227 of the Constitution.

5. We, therefore, reject the petition by relegating the petitioner to the appellate remedy under Section 18(1) of the Act. In case there is an issue of limitation when such an appeal is presented, we direct that the period of pendency of this petition from 29/9/2006 till today shall be taken into consideration to condone the delay, if such an appeal is presented within a period of two weeks from today. Undoubtedly, such an appeal filed by the petitioner along with the application for deposit will have to be considered on their own merits.

**(J.H. Bhatia, J.)** **(B.H. Marlapalle,J.)**